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Attorneys for Defendant,  
THE BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

|                          |   |   |
|--------------------------|---|---|
| ANDREA GORDON,           | ) | Case No. 3:08-cv-03630-BZ                   |
|                          | ) |   |
| Plaintiff,               | ) | <b>ANSWER OF DEFENDANT THE BAY</b>          |
|                          | ) | <b>AREA AIR QUALITY MANAGEMENT</b>          |
| v.                       | ) | <b>DISTRICT TO PLAINTIFF'S</b>              |
|                          | ) | <b>COMPLAINT</b>                            |
| THE BAY AREA AIR QUALITY | ) |   |
| MANAGEMENT DISTRICT,     | ) |   |
|                          | ) |   |
| Defendant.               | ) | <b>JUDGE:</b> Magistrate Judge              |
|                          | ) | Bernard Zimmerman                           |
|                          | ) | <b>COURTROOM:</b> G, 15 <sup>th</sup> Floor |

Defendant THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT answers  
the Complaint of plaintiff ANDREA GORDON as follows:

**1.**

Answering paragraphs 1 and 2, these paragraphs call for legal conclusions which  
require no answer and to the extent an answer is required, defendants deny generally and  
specifically each and every allegation contained therein.

**2.**

Answering paragraph 3, defendant admits that venue is proper in this Court.

**3.**

Answering paragraphs 4, 5, and 6, defendant admits.

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///

1 4.

2 Answering paragraphs 7 and 8, defendant admits that plaintiff was not selected for the  
3 Supervising Environmental Planner position. Except as so admitted, defendant is without  
4 knowledge or information to form a belief as to the truth of the allegations contained in said  
5 paragraph, and on that basis denies each and every allegation contained therein.

6 5.

7 Answering paragraph 9, defendant admits that plaintiff applied for approximately nine  
8 positions beginning on January 2006 but denies each and every other allegation contained  
9 therein.

10 6.

11 Answering paragraph 10, defendant admits that plaintiff filed a charge of  
12 discrimination against defendant with the EEOC. Except as so admitted, defendant is without  
13 knowledge or information to form a belief as to the truth of the allegations contained in said  
14 paragraph, and on that basis denies each and every allegation contained therein.

15 7.

16 Answering paragraphs 11 and 12, defendant admits that plaintiff engaged in behavior  
17 that was the subject of reprimands/counseling by her supervisor. Except as so admitted,  
18 defendant denies each and every allegations contained therein.

19 8.

20 Answering paragraph 13, defendant is without knowledge or information to form a  
21 belief as to the truth of the allegations contained in said paragraph, and on that basis denies  
22 each and every allegation contained therein.

23 9.

24 Answering paragraphs 14, 15, 18, 20, 22, 24, 25 (b), 27, 29, and 31, defendant denies.

25 10.

26 Answering paragraphs 16 and 17, defendant admits on information and belief that  
27 plaintiff filed the stated charges of discrimination and received the stated right to sue letters,  
28 but denies each and every other allegation contained therein.

1 11.

2 Answering paragraph 19, defendant hereby incorporates by reference its answers to  
3 paragraphs 1-18 herein.

4 12.

5 Answering paragraph 21, defendant hereby incorporates by reference its answers to  
6 paragraphs 1-20 herein.

7 13.

8 Answering paragraph 23, defendant hereby incorporates by reference its answers to  
9 paragraphs 1-22 herein.

10 14.

11 Answering paragraph 25 (a), defendant hereby incorporates by reference its answers to  
12 paragraphs 1-24 herein.

13 15.

14 Answering paragraph 26, defendant hereby incorporates by reference its answers to  
15 paragraphs 1-25 herein.

16 16.

17 Answering paragraph 28, defendant hereby incorporates by reference its answers to  
18 paragraphs 1-27 herein.

19 17.

20 Answering paragraph 30, defendant hereby incorporates by reference its answers to  
21 paragraphs 1-29 herein.

22 **AFFIRMATIVE DEFENSES TO EACH AND EVERY CLAIM IN THE COMPLAINT**

23 1.

24 The Complaint fails to state sufficient facts to constitute a cause of action upon which  
25 relief can be granted.

26 2.

27 The Complaint fails to set forth a case or controversy as required by Federal law.

28 ///

1 3.

2 Plaintiff lacks standing to assert the claims herein as required by Federal law.

3 4.

4 Plaintiff has failed to comply with the statutory notice and claim requirements of the  
5 DFEH and/or EEOC.

6 5.

7 Defendant was acting in good faith and within the scope of its official duties, and the  
8 defendant had no knowledge that the alleged wrongful acts, if any, were illegal and/or  
9 unconstitutional, and defendant had no knowledge that the alleged wrongful acts, if any, were  
10 violative of plaintiff's rights. Based upon the above, defendant is absolutely immune from  
11 suit.

12 6.

13 Plaintiff has failed to state a claim since she was not actually excluded from  
14 participating, denied benefits or otherwise discriminated against on the basis of race, color,  
15 and/or gender.

16 7.

17 Plaintiff has failed to bring this action in a timely matter and has otherwise failed to  
18 maintain this action, and each cause of action therein, within the statute of limitations  
19 applicable to this action, including but not limited to, those set forth in the California Code of  
20 Civil Procedure sections 337, 337.1, 337.15, 338, 339, and 340(3).

21 8.

22 Plaintiff's Complaint, and each cause of action therein, is barred by plaintiff's failure to  
23 exhaust administrative and judicial remedies prior to initiating suit.

24 9.

25 Defendant is immune or otherwise privileged from liability under the provisions of  
26 California Government Code, including but not limited to, sections 815, 815.2, 815.2(b),  
27 815.4, 815.6, 818, 818.2, 818.8, 820, 820.2, 820.4, 820.6, 820.8, 820.9, 821, 821.2, 822.2, and  
28 950.2.

1 **10.**

2 The causes of action set forth in the Complaint, and each of them, are barred by the  
3 doctrine of estoppel.

4 **11.**

5 The causes of action set forth in the Complaint, and each of them, are barred by the  
6 doctrine of laches.

7 **12.**

8 Plaintiff is barred from recovery by the equitable doctrine of unclean hands.

9 **13.**

10 Defendants are informed and believe and thereon allege that they did not know about  
11 the alleged retaliation, and that their response was immediate and proper.

12 **14.**

13 The Complaint and its causes of action, are barred by virtue of defendant's privilege in  
14 pursuing its own economic interest, exercising appropriate business judgments, and exercising  
15 managerial discretion.

16 **15.**

17 Defendant alleges that it exercised reasonable diligence to discharge its duties and that  
18 all such duties and obligations have been appropriately, completely, and fully performed and  
19 discharged.

20 **16.**

21 Defendant is informed and believes and thereon alleges that it has performed and fully  
22 discharged any and all obligations and legal duties to plaintiff pertinent to the matters alleged  
23 in plaintiff's Complaint.

24 **17.**

25 The challenged employment practices were job related and consistent with business  
26 necessity.

27 ///

28 ///

18.

Defendant currently has insufficient information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant therefore reserves the right to assert additional affirmative defenses in the event that discovery indicates that they would be appropriate.

**WHEREFORE**, this answering defendant prays that judgment be entered in its favor as follows:

1. That the plaintiff's Complaint be dismissed with prejudice;
2. That plaintiff take nothing by way of her Complaint;
3. That this answering defendant recover its costs of suit and reasonable attorney's fees therein; and
4. That this answering defendant recover such other and further relief as the Court deems just and proper.

Dated: August 19, 2008

DALEY & HEFT

By: /s/ Golnar J. Fozi, Attorney  
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GOLNAR J. FOZI, ESQ.  
Attorneys for Defendant,  
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MANAGEMENT DISTRICT  
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MANAGEMENT DISTRICT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREA GORDON,

Plaintiff,

v.

THE BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT,

Defendant.

Case No. 3:08-cv-03630-BZ

**CERTIFICATE OF SERVICE**

**JUDGE:**

Magistrate Judge  
Bernard Zimmerman  
G, 15<sup>th</sup> Floor

**COURTROOM:**

I, Maria E. Kilcrease, certify and declare as follows:

1. I am over the age of 18 years and not a party to this action.
2. I caused to be serve the following document(s) via electronic mail:

**ANSWER OF DEFENDANT THE BAY AREA AIR QUALITY MANAGEMENT  
DISTRICT TO PLAINTIFF'S COMPLAINT**

3. **Electronic Mail Notice List**

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1 The following are those who are currently on the list to receive e-mail notices for this case:

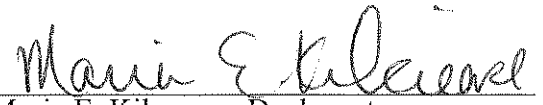
2 Howard Moore, Jr., MOORE & MOORE:

moorlaw@aol.com

3 **Attorney for Plaintiff, ANDREA GORDON**

4 I declare under penalty of perjury that the foregoing is true and correct. Executed on

5 August 19, 2008 in Solana Beach, California.

6   
Maria E. Kilcrease, Declarant